Lee Mew Kwan v Royal Lake Club (through Jasmin bt Mohd Sharif as Secretary and Officer to Kelab Taman Perdana Diraja Kuala Lumpur)

HIGH COURT (KUALA LUMPUR) — SUIT NO 22NCVC-608 OF 2011
PRASAD ABRAHAM J
24 SEPTEMBER 2012

Unincorporated Associations — Club — Management Committee — Doctrine of collective responsibility — Members of Management Committee bound by doctrine of collective responsibility — Members to abide by decision of majority

Unincorporated Associations — Club — Membership — Expulsion of member — Alleged misconduct of member — Member of General Committee of Royal Lake Club lodging complain to Registrar of Societies against proposed increase of club's subscription rates — Disciplinary panel ordering member to be expelled — Hearing of member's appeal conducted unfairly — Appeal process tainted with unfairness — Decision of Appeal Committee a nullity — Club unfairly imposing persona non grata order against member

Unincorporated Associations — Club — Rules and constitution — Members contractually bound by constitution and by-laws of club — Implementation of constitution and by-laws to be done fairly — Court may interfere where there is manifest unfairness or breach of natural justice

The plaintiff sought declarations and damages in respect of her expulsion as a member of the Royal Lake Club ('the Club'). The plaintiff at the time of her expulsion was a member of the General Committee of the club. The plaintiff was against the proposed increase in the subscription rates for the club. The increases were approved in the General Meeting and by the General Committee of which the plaintiff was a member. The plaintiff then lodged a complaint to the Registrar of Societies ('ROS'). The office bearers of the Club felt strongly the behavior of the plaintiff brought the club into disrepute and thereafter initiated disciplinary proceedings against the plaintiff. A disciplinary inquiry was convened to deal with the complaint against the plaintiff the quintessence of which was to go behind the General Committee and lodge a report with the ROS. The disciplinary panel found the plaintiff guilty and ordered the plaintiff to be expelled as a member of the club. The plaintiff appealed against the decision of the disciplinary panel. The first meeting of General Committee appeal hearing was convened despite the plaintiff being

absent. The chairman who was a witness in the disciplinary proceedings asked the complainants to give their views on the case. There was a detailed discussion on the merits of the appeal. It was later decided to adjourn the hearing to another date. At the resumed hearing for the appeal, no specific committee of the General Committee was formed in respect of the appeal of the plaintiff and interested parties by virtue of being General Committee members were present. However, the minutes of the subsequent general meeting showed an Appeal Committee was finally formed. The composition of the committee included one Mr. Sankar, who had a complaint lodged against him by the plaintiff at that time. The Appeal Committee affirmed the disciplinary panel's decision. Despite the said Mr Sankar declaring himself not to participate in the decision making process, he was present to make up the quorum and the minutes showed he participated in deliberations.

Held, allowing the plaintiff's claims with no order as to costs:

(1) Although a member like the plaintiff is bound by the constitution and by laws of the club as they are matters of contract that binds the plaintiff, the implementation of these rules, must be done fairly or seen to be done fairly, and where there is a failure to do so, the court will intervene. The line of authorities that a member is bound by the rules incorporated in its constitution and/or by laws does not preclude the court from intervening where manifest unfairness is shown or there has been a breach of natural justice in the implementation of the constitution and by-laws of the club (see para 4); *Darshan Singh v Farid Kamal Hussain (suing on behalf and for the Board of members and Kelab Sukan Pulau Pinang* [2005] 3 MLJ 502 referred.

(2) The hearing of the appeal was conducted unfairly. The Appeal Committee had a potpourri of members, all of whom should not in all fairness have sat in the first place and deliberated on the matter and by the time the Appeal Committee was eventually formed it could hardly be said that objectivity and impartiality could be exercised as much discussion had already taken place on the appeal. The whole process was a disciplinary proceeding and if any step was tainted with unfairness the whole decision would be rendered a nullity. The court thus vitiated the findings against the plaintiff (see para 9); *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487 referred.

(3) The disciplinary proceedings by-law 10(c) clearly provided the decision to expel the plaintiff would be stayed until her appeal was disposed of. The club declared the plaintiff *persona non grata* on the basis of her alleged threatening behaviour to the club secretary. This decision was reached by the club without even requiring the plaintiff to proffer an explanation. The evidence did not reflect anything serious to warrant such an action by the club. As this order was made after the order for

expulsion by the disciplinary panel, it rendered the plaintiff's substantive right to a stay of the expulsion order against her, a substantive contractual right nugatory without due enquiry. This order also seriously impaired the plaintiff's right to her final right of appeal. The defendant had been unfair in the imposition of a *persona non grata* order against the plaintiff and it should be set aside; *Raja Servai a/l SHS Iyadorai v Tunku Abdul Aziz Ibrahim & Ors* [2005] 5 MLJ 160 distinguished (see paras 10–11).

(4) As a member of the General Committee if a decision is taken, the doctrine of collective responsibility requires complete adherence to that decision even if it is felt strongly that the decision is unconstitutional, then the proper thing to do is to resign and take the issue up as a member from the floor. The club has a reputation to maintain and its members expect an atmosphere of civility and relaxation (see para 14).

(5) Since the orders made by the court would more than adequately vindicate the plaintiff, the court only awarded nominal damages of RM5,000 (see para 17); *Tan Geok Khoon & Gerard Francis Robless v Paya Terubong Estate Sdn Bhd* [1988] 2 MLJ 672 referred.

[Bahasa Malaysia summary

Plaintif memohon deklarasi dan ganti rugi berhubung penyingkirannya sebagai ahli Kelab Tasik Perdana ('kelab tersebut'). Plaintif pada masa penyingkirannya merupakan ahli Jawatankuasa Am kelab tersebut. Plaintif telah membantah cadangan kenaikan kadar keahlian untuk kelab tersebut. Kenaikan itu telah diluluskan dalam Mesyuarat Am dan oleh Jawatankuasa Am yang mana plaintif merupakan ahli. Plaintif kemudian telah membuat aduan kepada Pendaftar Kesatuan ('PK'). Pemegang-pemegang jawatan kelab tersebut merasakan kelakuan plaintif telah menjejaskan nama baik kelab tersebut dan kemudian memulakan prosiding tatatertib terhadap plaintif. Siasatan tatatertib telah diadakan untuk membicarakan aduan terhadap plaintif yang telah membelakangi Jawatankuasa Am dan membuat laporan kepada PK. Panel tatatertib mendapati plaintif bersalah dan memerintahkan plaintif disingkirkan sebagai ahli kelab tersebut. Plaintif merayu terhadap keputusan panel tatatertib itu. Mesyuarat pertama Jawatankuasa Am perbicaraan rayuan telah diadakan meskipun plaintif tidak hadir. Pengerusi yang merupakan saksi dalam prosiding tatatertib itu meminta pengadu-pengadu untuk memberikan pandangan mereka tentang kes itu. Terdapat perbincangan terperinci atas merit rayuan. Adalah diputuskan kemudian untuk menangguhkan perbicaraan kepada tarikh lain. Semasa sambungan perbicaraan rayuan itu, tiada jawatankuasa khusus Jawatankuasa Am dibentuk berhubung rayuan plaintif dan pihak-pihak berkepentingan yang merupakan ahli Jawatankuasa Am telah hadir. Walau bagaimanapun, minit Jawatankuasan Am berikutan itu menunjukkan Jawatankuasa Rayuan telahpun ditubuhkan. Jawatankuasa itu terdiri daripada Encik Sankar, yang mana terdapat aduan terhadapnya oleh plaintif pada masa itu. Jawatankuasa

Rayuan telah mengesahkan keputusan Panel Tatatertib itu. Walaupun Encik Sankar mengisytiharkan dirinya tidak terlibat dalam proses membuat keputusan, dia hadir untuk mencukupkan korum dan minit menunjukkan dia turut serta dalam membuat keputusan.

Diputuskan, membenarkan tuntutan plaintif tanpa perintah terhadap kos:

(1) Walaupun seorang ahli seperti plaintif adalah terikat dengan perlembagaan dan undang-undang kecil kelab tersebut kerana terdapat perkara-perkara berhubung kontrak yang mengikat plaintif, pelaksanaan peraturan-peraturan tersebut, hendaklah dilaksanakan dengan adil atau dilihat telah dilaksanakan dengan adil, dan jika terdapat kegagalan berbuat demikian, mahkamah akan campur tangan. Autoriti-autoriti membuktikan bahawa ahli yang terikat oleh peraturan yang diperbadankan dalam perlembagaannya dan/atau oleh undang-undang kecil tidak mengecualikan mahkamah daripada campur tangan di mana dibuktikan terdapat keadilan melampau atau berlaku pelanggaran keadilan asasi dalam pelaksanaan perlembagaan dan undang-undang kecil kelab tersebut (lihat perenggan 4); *Darshan Singh v Farid Kamal Hussain (suing on behalf and for the Board of members and Kelab Sukan Pulau Pinang* [2005] 3 MLJ 502 dirujuk.

(2) Perbicaraan rayuan itu tidak dilakukan dengan adil. Jawatankuasa Rayuan mempunyai ahli-ahli yang mana demi keadilan tidak patut bersidang dan membuat keputusan berhubung perkara tersebut dan apabila Jawatankuasa Rayuan akhirnya ditubuhkan maka tidak boleh dikatakan objektif dan keadilan telah dilaksanakan kerana perbincangan telahpun diadakan atas rayuan. Keseluruhan proses itu merupakan prosiding tatatertib dan jika apa-apa langkah telah dicemari dengan ketidakadilan maka keseluruhan keputusan adalah dianggap terbatal. Mahkamah dengan itu tidak bersetuju dengan penemuan terhadap plaintif (lihat perenggan 9); *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487 dirujuk.

(3) Undang-undang kecil prosiding tatatertib 10(c) jelas memperuntukkan keputusan untuk menyingkir plaintif akan digantung sehingga rayuannya selesai. Kelab tersebut mengisytiharkan plaintif *persona non grata* atas dasar kelakuan mengugutnya yang didakwa terhadap setiausaha kelab tersebut. Keputusan ini dibuat oleh kelab tersebut tanpa menghendaki plaintif mengemukakan penjelasan. Bukti tidak menggambarkan apa-apa yang serius untuk mewajarkan tindakan sedemikian oleh kelab tersebut. Oleh kerana perintah ini telah dibuat selepas perintah penyingkiran oleh panel tatatertib, ia memberikan hak substantif plaintif untuk menggantung perintah penyingkiran terhadapnya, hak nugatori kontraktual yang subtantif tanpa perlu siasatan. Perintah ini juga telah menjejaskan hak terakhir plaintif untuk

merayu. Defendan tidak berlaku adil dengan mengemukakan perintah *persona non grata* terhadap plaintif dan ia patut diketepikan (lihat perenggan 10–11); *Raja Servai a/l SHS Iyadorai v Tunku Abdul Aziz Ibrahim & Ors* [2005] 5 MLJ 160 dibeza.

(4) Sebagai ahli Jawatankuasa Am jika keputusan dibuat, doktrin tanggungjawab kolektif menghendaki pematuhan menyeluruh terhadap keputusan tersebut meskipun dirasakan keputusan itu tidak berperlembagaan, kemudian perkara wajar untuk dibuat adalah untuk meletak jawatan dan mengambil isu itu sebagai ahli kelab. Kelab tersebut mempunyai nama baik untuk dikekalkan dan ahli-ahlinya mengharapkan suasana yang aman dan harmoni (lihat perenggan 14).

(5) Oleh kerana perintah-perintah yang dibuat oleh mahkamah adalah lebih daripada mencukupi untuk mengadili plaintif, mahkamah hanya mengawardkan ganti rugi nominal RM5,000 (lihat perenggan 17); *Tan Geok Khoon & Gerard Francis Robless v Paya Terubong Estate Sdn Bhd* [1988] 2 MLJ 672 dirujuk.]

Cases referred to

Darshan Singh v Farid Kamal Hussain (suing on behalf and for the Board of members and Kelab Sukan Pulau Pinang [2005] 3 MLJ 502; [2004] 4 CLJ 410, CA (refd)

Dato' Haji Talaat bin Hj Husain v Chak Kong Ying [2004] 7 MLJ 295, HC (refd)

Lee v Showmen's Guild of Great Britain [1952] 1 All ER 1175, CA (refd)

Raja Servai a/l SHS Iyadorai v Tunku Abdul Aziz Ibrahim & Ors [2005] 5 MLJ 160; [2005] 6 CLJ 443, HC (distd)

Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487, HC (refd)

Stollery v Greyhound Racing Control Board [1972] HCA 53, HC (refd)

Tan Geok Khoon & Gerard Francis Robless v Paya Terubong Estate Sdn Bhd [1988] 2 MLJ 672 (refd)

Tharmalingam v Sambathan [1961] 1 MLJ 63, CA (refd)

David Mathews (Yusoff Khan and Azinuddin Karim with him) (Thomas Philip) for the plaintiff.

Rishwant Singh (Gandhi Mohan Maniam with him) (Zul Rafique & Partners) for the defendant.

Prasad Abraham J:

[1] The plaintiff seeks several declarations and a claim for damages in respect of her expulsion as a member of a renowned social club in Kuala Lumpur, the Royal Lake Club (the club). The club is a well established club nestled in the

heart of one of the green lungs in the city ie Taman Tasik Perdana or as it is still commonly referred to as the Lake Gardens. The plaintiff at the time of her expulsion was also a member of the general committee of the club. The defendant ie the club maintains the plaintiff was properly expelled as a member of the club in accordance with the club's constitution and by–laws. The trial was spread over several days and I subsequently reserved judgment to enable parties to put in their respective written submissions. I now deliver my reasons for the findings that I have made in respect of the plaintiff's claim.

[2] Before going into the evaluation of the evidence in this case and due consideration of the arguments taken, I perhaps should consider the law on the subject before proceeding further. I refer to the case of *Tharmalingam v Sambathan* reported in [1961] 1 MLJ 63 wherein it was held:

> [1] it was not necessary in the present case to examine the principle of natural justice;
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> [2] it was proved beyond doubt that there were no grounds on which the respondent could be satisfied that the appellant had acted to the detriment of the MIC; and
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> [3] it was a condition precedent that the appellant should resort to the domestic remedies provided before resorting to the courts.

[3] It is the defendant's contention that this principle is applicable in our case an argument which I will come to later. However the cases have developed from the position of being shackled by the constitution and or rules of social clubs to imply into the implementation of them, a sense of fair play and natural justice. I refer to the decision of the Court of Appeal in *Darshan Singh v Farid Kamal Hussain (suing on behalf and for the Board of members and Kelab Sukan Pulau Pinang* [2005] 3 MLJ 502; [2004] 4 CLJ 410 where it was held:

> (1) The respondent was a social club governed by its Constitution and rules. The rules of natural justice apply to the respondent. Therefore, members could not be arbitrarily expelled or suspended by the respondent without first being given a hearing because their contracts of membership include a duty to act fairly. By accepting them as members and receiving their subscriptions the respondent by implication undertakes to treat them justly and in accordance with the rules.

and at p 510 (MLJ); p 417 (CLJ) of the report where His Lordship Arifin Zakaria JCA as he then was said quoting Lord Denning LJ in *Lee v Showmen's Guild of Great Britain* [1952] 1 All ER 1175, at p 1181 and I quote:

> The question in the present case is: To what extent will the courts examine the decisions of domestic tribunals on points of law? This is a new question which is not to be solved by turning to the club cases. In the case of social clubs the rules usually empower the committee to expel a member who, in their opinion and nothing else. The court have no wish to sit on appeal from their decisions on such a matter

anymore than from the decisions of a family conference. They have nothing to do with social rights or social duties. *On any expulsion they will see that there is fair play*. They will see that, that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observed the procedure laid down by the rules, but will not otherwise interfere: see *Labouchere v Earl of Wharncliffe (18)*, *Dawkins v Antrobus (1)*. It is very different with domestic tribunals, which sit in judgment on the members of a trade or profession. They wield powers as great, if not greater, then any exercised by the courts of law. They are usually empowered to do this for any breach of their rules, which, be it noted, are rules which they impose and which he has no real opportunity of accepting or rejecting. In theory, their powers are based on contract. The man is supposed to have contracted to give them these great powers, but in practice he has no choice in the matter. If he is to engage in the trade he has to submit to the rules promulgated by the committee. Is such a tribunal to be treated by these courts on the same footing as a social club? I say: 'No'. A man's right to work is just as important, if not more important, to him than his rights of property. These courts intervene every day to protect rights of property. They must also intervene to protect the right to work.

[4] Whilst, this court accepts the various authorities and texts cited by counsel for the defendant, that a member like the plaintiff is bound by the constitution and by-laws of the club as they are matters of contract that binds the plaintiff, I am of the view the implementation of these rules, must be done fairly or seen to be done fairly, and where there is a failure to do so, the court will intervene and I am further of the view the line of authorities that a member is bound by the rules incorporated in its constitution and/or by-laws does not preclude the court from intervening where manifest unfairness is shown or there has been a breach of natural justice in the implementation of the constitution and by-laws of the club.

[5] I now turn to the facts of this case. The plaintiff was against the proposed increase in the subscription rates for the club and made her position clear as the evidence shows. The increases were approved in general meeting and by the general committee of which the plaintiff was a member. The president of the club ('DW2') then approached and obtained approval from the registrar of societies ('ROS'), for the increase. One would have thought the matter would end there but it didn't. It was discovered that someone from the club had lodged a complaint to the ROS and the ROS had in fact 'visited' the home of the deputy president of the club. Whilst, in the process of giving a statement to the ROS, the deputy president noticed the name of the plaintiff as being the complainant. In view of the fact the plaintiff was a member of the General Committee, the office bearers of the club felt strongly the behavior of the plaintiff brought the club into disrepute and thereafter initiated disciplinary proceedings against the plaintiff.

[6] The constitution of the club provides that a disciplinary inquiry be

convened and the same was done to deal with the complaint against the plaintiff the quintessence of which was to go behind the General Committee and lodge a report with the registrar of societies (see bundle A, p 10 and p 52). The charge, the notes of proceedings and the reasons for the finding of the disciplinary panel are found from pp 75–76 of bundle A, and at p 652–671 of bundle C. It was the decision of the disciplinary panel to find the plaintiff guilty as charged and having considered the seriousness of the matter, ordered the plaintiff to be expelled as a member of the club (see the grounds of decision of the disciplinary inquiry on 12 October 2010 at p 674 of bundle C). The plaintiff was given due notice of the hearing of the disciplinary proceedings and was allowed to call witnesses in her defence which the plaintiff did. The club had complied with the disciplinary proceedings by-laws and I find these proceedings were conducted fairly.

[7] The plaintiff then appealed against the decision of the disciplinary panel dismissing her from the club and the plaintiff lodged her appeal on the 12 October 2010 (see p 88 of bundle A. See also disciplinary by-laws 12(a) of bundle A) to the General Committee. The first meeting of General Committee appeal hearing was convened on 10 November 2010 and the minutes appear at pp 685–690 of bundle C. My attention is drawn to minutes headed as minutes general committee appeal hearing — AH20102A hearing at Madam Pansy Lee Mew Kwan despite, the plaintiff being absent, the chairman who was a witness in the disciplinary proceedings asked the complainants to give their views on the case. There appears to have been a detailed discussion on the merits of the appeal. It was later decided to adjourn the hearing to another date.

[8] If the disciplinary by-laws were to be looked at cl 13–14 of the by-laws (p 54 of bundle A) and cl 13(b) in particular allows for recalling of witnesses by the general committee if deemed necessary. Here the witnesses formed part of the General Committee and together with the complainants were already looking into the appeal on the merits. The resumed hearing for the appeal was convened on the 8 December 2010 (see p 691 of bundle C — note the heading of the minutes). Here again no specific committee of the General Committee was formed in respect of the appeal of the plaintiff and interested parties by virtue of being General Committee members were present. It is also to be noted that the disciplinary panel were requested to amend their minutes. The minutes of the general meeting on the 15 December 2010 (pp 700–701 of the bundle C), show an Appeal Committee was finally formed. The composition of the committee included Mr Venkiteswaran Sankar, who had a complaint lodged against him by the plaintiff at that time (not in dispute). The appeal committee affirmed the disciplinary panel decision despite the said Mr Venkiteswaran Sankar declaring himself not to participate in the decision making process but was present to make up the quorum (see pp 687–688 of bundle C). However the minutes show he participated in deliberations.

[9] I find the hearing of the appeal was conducted unfairly. The Appeal Committee had a potpourri of members, all of whom should not in all fairness have sat in the first place and deliberated on the matter and by the time the Appeal Committee was eventually formed it can hardly be said that objectivity and impartiality could be exercised as much discussion had already taken place on the appeal. I refer to the case of *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* reported in [1989] 1 MLJ 487 and to the judgment of His Lordship Edgar Joseph JR J as he then was at p 491 and I quote:

> It was common ground that Mr Ogle was in fact present throughout the deliberations of the disciplinary authority and no reasons were vouchsafed to this court as to the necessity for his presence there. I accept that Mr Ogle did not discuss the case with members of the disciplinary authority nor did he take part in their deliberations. The fact remains, however, that he was present with the members of the disciplinary authority during their deliberations and decision.
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> In *Cooper v Wilson* [1937] 2 KB 309, Greer LJ said this:
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> > I think the cases relied on by *Mr Wooll R v Essex Justices* [1927] 2 KB 475, *R v London County Council* [1892] 1 QB 190 and *R v Brixton Income Tax Commissioners* (1913) 29 TLR 712 establish the proposition that if the conduct of the justices is such as to give rise to a reasonable suspicion that justice does not seem to have been done, then their decision should be set aside. It is noticeable that in all those cases it was established to the satisfaction of the court that the persons whose presence was complained of when the tribunal was considering its decision in fact took no part in the decision … I ask myself what would anyone have thought who came into the room where the committee were sitting, after the plaintiff had gone out while those were considering their decision, and found sitting on the Bench with the committee one of the respondents to the appeal who had opened the case, though he had left the calling of the witnesses to Superintendent Hughes. Such a person, if reasonable, would have been likely to say to himself:
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> > 'There has been an opportunity here for one of the parties to influence the judgment of the committee, and it looks as if justice may seem not to have been done.'
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> And, in the same case, this is what Scott LJ said at p 344:
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> > It makes no difference whether he then discussed the case with them or not; the risk that a respondent may influence a court is so abhorrent to English notions of justice that the possibility of it or even the appearance of such a possibility is sufficient to deprive a decision of all judicial force, and to render it a nullity.

I also refer to an unreported decision of the High Court of Australia in *Stollery v Greyhound Racing Control Board* [1972] HCA 53 and to the judgment of Gibbs J at p 8 of the judgment and I quote:

> The Court of Appeal consider that if Mr Smith was disqualified from sitting on the Greyhound Racing Control Board ('the board') when it came to deliberate on the question whether the appellant was guilty of any act which in the opinion of the

board was in any way detrimental to the proper control and regulation of greyhound racing natural justice would require the decision of the board, reached when Mr Smith was present, to be set aside. This view was correct. It is true that the board is not a regular judicial tribunal and that it has been doubted whether the principles which require the decision of a tribunal to be set aside if a member who was interested or biased was present when the decision was reached apply with the same strictness to the case of administrative bodies: *R v London Country Council; Re Empire Theatre* (1894) 71 LT 638, at p 640; *R v Huggins* [1985] 1 QB 563, at pp 565–566. However, when the board is adjudicating as to whether a bookmaker should be found guilty of conduct that may result in his disqualification, it is making a decision which may have a serious effect on the rights and livelihood of the person whose conduct is called in question. Rules conferring jurisdiction of that kind must be construed as requiring that the proceedings should be carried on in accordance with the principles of natural justice, unless an intention to exclude those principles plainly appears: *Australian Workers' Union v Bowen* (1948) 77 CLR 601, at p 631; *Wiseman v Borneman* [1971] AC 297, at p 318. No such intention appears in the rules of the board; on the contrary, those rules required 'due inquiry' in the present case — r 21(2)(c)(iii). The principles of natural justice are not rigid or technical. 'The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth': *Russel v Duke of Norfolk* [1949] 1 All ER 109, at p 118. It is, however, clear that it would not be in accordance with the principles of natural justice for a person who was in truth the accuser to be present as a member of the tribunal when the charge when he had promoted was heard, even if he took no actual part in the proceedings: *R v London County Council; Ex parte Akkersdyk* [1892] 1 QB 190, at pp 195–196; *Dickason v Edwards* (1910) 10 CLR 243, at pp 252–253, 256, 263. The very presence of a person who has brought forward a complaint may, even unconsciously, inhibit the discussions and effect the deliberations of the other members of the tribunal.

A B C D E F

And further down in the report.

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There is no suggestion that Mr Smith acted otherwise than in good faith and with a desire to do his duty. He indeed moved to withdraw, first, when the board conferred in the course of its preliminary inquiry, and again before the board deliberated on the questions of guilt and punishment. He should not have been persuaded to remain, at least on the second occasion when the board considered the questions whether the appellant had been guilty as charged and, if so, what punishment should be imposed upon him. Although he took no part whatever in the board's discussions, his presence as a member of the board rendered the proceedings invalid and the decision bad.

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I also refer to the decision of the Court of Appeal referred to earlier ie *Darshan Singh v Farid Kamal Hussain (suing on behalf and for the Board of members and Kelab Sukan Pulau Pinang* [2005] 3 MLJ 502; [2004] 4 CLJ 410 and holding 3 and I quote:

> [3] The complainant or prosecutor should not participate in a decision or in an appeal from a decision and should not even appear to participate therein. To do so will be contrary to the rules of natural justice. In the present case, LY Hong could not be regarded as a complainant or prosecutor. However, he admitted listening to the version given by Gitu and had expressed his displeasure of the appellant's conduct for being in a fight again. There was nothing to suggest that LY Hong had a personal grudge against the appellant but judging by his evidence before the DC he was not at all pleased with what had happened. He seemed to suggest that the appellant was partly to blame if not wholly to blame for the incident. In the circumstances, it might be difficult for him to act impartially in considering the appeal before the main contractor.

And to the judgment of His Lordship Arifin Zakaria as he then was at p 513 (MLJ); p 421–422 (CLJ) of the report.

> In supporting his arguments the appellant relied heavily on the case of *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487. In that case the applicants were lecturers charged with offences under Universiti Sains Malaysia (Discipline Rules) 1979. They were both found guilty by the disciplinary authority. They then applied to the High Court by way of certiorari to have the finding of the disciplinary authority quashed. One of the grounds advanced before the High Court was that the complainant, the registrar of the university was present during the proceedings before the disciplinary authority. It should, however, be emphasised that in that case the court found the registrar was very far from being a mere nominal complainant and had shown active partisanship in the proceedings before the disciplinary authority. The High Court allowed their application and quashed the decision of disciplinary authority. The principle that may be distilled from that case and the line of authorities referred to in that case is that, the complainant or prosecutor should not participate in a decision or in an appeal from a decision, and should not even appear to participate; to do so would be contrary to the rule of natural justice.

[10] The whole process is a disciplinary proceeding and if any step is tainted with unfairness the whole decision would be rendered a nullity. I would vitiate the findings against the plaintiff. Looking at the disciplinary proceedings by-laws, 10(c) it clearly provides the decision to expel the plaintiff would be stayed until her appeal is disposed of. The club declared the plaintiff *persona non grata* on the basis of her alleged threatening behavior to the club secretary. This decision was reached by the club without even requiring the plaintiff to proffer an explanation. This despite the fact that the effect of the *persona non grata* order would be to negate the plaintiff's right to a stay pending an appeal to the General Committee. The evidence does not reflect anything serious to warrant such an action by the club. At the very least, the plaintiff side of the incident should have been given consideration (See *Ashton And Reid on Club Law [Jordons 2005]* p 36 paras 2–23).

Quoting Megarry VC in *re GKN Nuts & Bolts Ltd Sports and Social Club* where he said and I quote:

> In club cases the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not, of course, saying these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints.

[11] I refer to bundle A p 90. The club continued to enforce its order of *persona non grata* during the appeal process. As this order was made after the plaintiff's order for expulsion by the disciplinary panel by imposing such an order, it rendered the plaintiff's substantive right to a stay of the expulsion order against her, a substantive contractual right nugatory without due enquiry. This order also to my mind seriously impaired the plaintiff's right to her final right of appeal ie rule 16–7 of the disciplinary bye law (p 54 of bundle A). How could the plaintiff be expected to exercise her right when her presence in the club was prohibited. The facts here differ for those in the case of *Raja Servai a/l SHS Iyadorai v Tunku Abdul Aziz Ibrahim & Ors* [2005] 5 MLJ 160; [2005] 6 CLJ 443 where the order for suspension was granted pending further investigation. In our instant case a decision as to the expulsion of the plaintiff had been reached and the said order affected the plaintiff's substantive right.

[12] The club could have imposed a *persona non grata* order but after due enquiry in this case. At the very least, the plaintiff should have been given a chance to explain her side of the story (see p 571 of bundle B3). I therefore find the defendant have been unfair in the imposition of a *persona non grata* order against the plaintiff and it should be set aside.

[13] Before granting the orders that I intend to make I wish to quote part of the judgment of Justice Dato' VT Singham in the case of *Dato' Haji Talaat bin Hj Husain v Chak Kong Ying* reported in [2004] 7 MLJ 295 where he said at para 59 pp 322–323 of the report and I quote:

> [59] Seeking the court's intervention involving social and sports clubs should if possible be avoided where the complaint alleged is trivial in nature. Every endeavour should be made to resolve disputes between members of the club and the club management committee within the ambit and rules of the club otherwise it might smear the good name of the club and as a result it could discourage people of high standing in society from contributing either financially or from contributing or offering their invaluable services to the club in the promotion of sports activities and recreational facilities for fear of being dragged to court. Also, it could burden innocent members of the club by way of legal expenses and costs which is not in the best interests of the club. Similarly, in the event of any dispute concerning the status and position of an ordinary member or a member of the management committee of

A a social or sports club, it should also if possible be resolved within and in accordance with the rules and ambit of the club before seeking the court's intervention so that the object of the formation of the club could be maintained and respected.

B **[14]** As a member of the General Committee if a decision is taken, the doctrine of collective responsibility requires complete adherence to that decision even if it is felt strongly that the decision is unconstitutional, then the proper thing to do is to resign and take the issue up as a member from the floor. The club has a reputation to maintain and its members expect an atmosphere of civility and relaxation as they enjoy the various facilities of the club. C Divisiveness is far from their minds as they relax to music or are on the dance floor, which would embroil them as members in costs, bearing in mind a majority of members are senior in age and the club provides an avenue to unwind in the golden years of their lives.

D **[15]** As to question of costs, I am aware that costs must follow the event except when it appears to the court that in the circumstances of the case some other order should be made (see *Janab's Key to Civil Procedure*) by the learned author Datuk Dr Hj Hamid Sultan bin Abu Backer at p 462 and I quote:

E The general principle envisaged in the rule is simply that costs follow the event and that the successful party is entitled to be paid his costs except when it appears to the court that in the circumstances of the case some other order should be made. The same principle was enunciated in greater detail by Parker LJ in *Ottway v Jones*:

F One starts with this, that, as a general principle, cost follow the event, and the successful party is entitled to be paid his costs unless there are special grounds to order otherwise, and those grounds, it is well settled, must be grounds connected with the cause, of action. No doubt also, where a plaintiff has wholly failed to establish his title or his right, it is impossible judicially to order the successful defendant to pay the plaintiffs costs. Indeed, as is shows by the cases to which my G Lord has referred, it is there said that the occasion for the exercise of the discretion does not arise until the plaintiff has established his right.

H **[16]** Having considered the factual matrix of the case in relation to the conduct of the plaintiff, the court is of the view this is a fit and proper case where no order as to costs should be made.

I **[17]** With regards to the claim for damages taking into consideration the facts of the case and the fact the orders made by this honorable court would more than adequately vindicate the plaintiff, the court will award nominal damages in the sum of RM5,000. I refer to the judgment of His Lordship Edgar Joseph Jr J (as he then was) in the case of *Tan Geok Khoon & Gerard Francis Robless v Paya Terubong Estate Sdn Bhd* [1988] 2 MLJ 672, particularly at p 680 of the judgment and I quote:

'Nominal damages' means a sum of money that may be spoken of, but has no existence in point of quantity.

They do not, however, mean small damages (per Lord Halsbury in *The Mediana* [1900] AC 113 and their amount could be miniscule. Nevertheless, their practical function is twofold; first, it is the means of establishing, determining or protecting a legal right (*Anglo-Cyprian Agencies v Paphos Wine Industries* [1951] 1 All ER 873) and, secondly, in the picturesque phrase of Maule J in *Beaumont v Greathead* (1846) 2 CB 494, 499; 135 ER 1039 'a mere peg on which to hang costs'.

[18] For these reasons, I award the plaintiff a sum of RM5,000 as nominal general damages. I therefore make the following orders:

(a) OIT of prayer 45 and 47 of the statement of claim;

(b) the order of 'persona non grata' made by the defendant against the plaintiff on 13 October 2010 is set aside;

(c) damages in the sum of RM5,000 in favour of the plaintiff; and

(d) no order as to costs.

Plaintiff's claims allowed with no order as to costs.

Reported by Kanesh Sundrum